

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

GREGORY MUÑIZ-CORDERO, et al.,

Plaintiffs

v.

WILLIAM BARRETO-TIRADO, et al.,

Defendants

CIVIL 04-2116 (DRD) (JA)

O R D E R

This matter is before the court on plaintiff's "Motion Requesting Certification of Appealability." (Docket No. 92, April 23, 2008.) "Plaintiffs request that a certification of appealability be emitted by the Court regarding the" dismissal of the complaint against Francisco Alemañy ("Alemañy") and Glorimar Cortés ("Cortés"). (*Id.* at 2.)

Gladys Virginia González Méndez was killed in an automobile accident on August 17, 2004. (Docket No. 18.) Plaintiffs are the deceased's husband and two minor children. (*Id.* at 2.) The deceased's husband, Gregory Muniz-Cordero, is appearing on behalf of himself, his wife's estate, and on behalf of each of his children. (*Id.*) The accident involved a Mack truck owned by Framar Engineering Corp. ("Famar") and driven by an employee. (Docket No. 37, at 1-2.) Alemañy and Cortés are the owners and sole shareholders of Framar. (Docket No. 33-1, at 3.)

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4 On June 14, 2007, summary judgment was entered dismissing all claims
5 against Alemañy and Cortés. (Docket No. 51.) Defendants claimed in their
6 motion for summary judgment that neither Alemañy nor the conjugal partnership
7 were ever the legal owners of the truck; the actual owner of the truck at the time
8 of the accident was Framar; all of Alemañy's acts were done in his capacity as an
9 officer of Framar, not in his personal capacity, nor of the conjugal partnership;
10 and "[i]n Puerto Rico[,] a corporation is a separate and individual legal entity[,]
11 different[] from its stockholders and of its officers." (Docket No. 43, at 3.)
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13 Since plaintiffs did not provide any evidence to dispute ownership of the
14 truck, the magistrate judge's report and recommendation focused on whether
15 "defendants can avail themselves of the protection of the corporate veil as
16 addressed in plaintiff's opposition to motion for summary judgment." (Docket No.
17 49-1, at 2.) However, "[p]laintiffs fail[ed] to allege fraud or any other grounds
18 that would justify piercing the corporate veil to hold Alemañy and Cortés
19 personally liable for plaintiffs' injuries." (Id. at 4.) Consequently, summary
20 judgment was entered, dismissing all claims against the defendants Alemañy and
21 Cortés. (Docket No. 51.)
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24 Appellate jurisdiction is limited to final decisions of the district court. 28
25 U.S.C. § 1291. As such, the granting of partial summary judgment in favor of
26 Alemañy and Cortés is not final, since "an order or judgment is usually considered
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3 'final' (hence, appealable) only when it resolves the contested matter, leaving
4 nothing to be done except execution of the judgment.'" Petralia v. AT&T Global
5 Info. Solutions Co., 114 F.3d 352, 354 (1st Cir. 1997) (quoting Director, Office of
6 Worker's Comp. Programs, United States Dep't of Labor v. Bath Iron Works Corp.,
7 853 F.2d 11, 13 (1st Cir. 1988)).
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10 Thus, plaintiffs correctly premise their motion on the doctrine of collateral
11 orders. (Docket No. 92, at 2.) The collateral order exception to the final
12 judgment rule was announced in Cohen v. Beneficial Indus. Loan Corp., 337 U.S.
13 541 (1949). See United States v. Sorren, 605 F.2d 1211, 1214 (1st Cir. 1979).
14 "For the collateral-order doctrine to apply, [the court must] [1] conclusively
15 determine the disputed question, [2] resolve an important issue completely
16 separate from the merits of the action, and [3] be effectively unreviewable on
17 appeal from a final judgment.'" Lee-Barnes v. Puerto Ven Quarry Corp., 513 F.3d
18 20, 25 (1st Cir. 2008) (quoting Will v. Hadlock, 546 U.S. 345, 349 (2006)). "[A]
19 decision that fails any of the . . . traditional elements of the collateral order
20 [doctrine] is not appealable[.] Libby v. Marshall, 833 F.2d 402, 407 (1st Cir.
21 1987) (citing United States v. Sorren, 605 F.2d at 1213.)
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24 The third element stated above has been designated in the First Circuit as
25 the most important element of the test, and suggested as the "dispositive criterion
26 of appellate jurisdiction over [interlocutory] orders." In re San Juan Star, 662
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3 F.2d 108, 112 (1st Cir. 1981); Rodríguez v. Banco Central, 790 F.2d 172, 178
4 (1st Cir. 1986); In re Empresas Noroeste, Inc., 806 F.2d 315, 317 (1st Cir. 1986).

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6 The question is one which "turns on whether irreparable harm would result to
7 appellants, not from the district court order itself, but from a delay in obtaining
8 appellate review of that order." In re San Juan Star Co., 662 F.2d at 112 (quoting
9 In re Continental Inv. Corp., 637 F.2d 1, 5 (1st Cir. 1980)).
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11 The only allegation of harm that can be gleaned from plaintiffs' motion is
12 potentially "wasting unnecessarily the resources of the Court and the parties"
13 should there be a second trial, and "a delay in case of a second jury trial or
14 prejudice to the defendant by the pssage [sic] of time." (Docket No. 92, at 3.)
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16 The First Circuit has repeatedly held "that potential burdens of litigation or
17 relitigation cannot alone constitute the requisite harm." In re San Juan Star Co.,
18 662 F.2d at 112 (citing In re Continental Inv. Corp., 637 F.2d at 5-6). Since
19 plaintiffs have failed to identify any harm, besides the burden of possible
20 relitigation should review be denied at this time, the collateral order doctrine has
21 not been satisfied. In re Empresas Noroeste, Inc., 806 F.2d at 317.
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23 In view of the above, plaintiffs motion requesting certification of
24 appealability is DENIED.
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26 At San Juan, Puerto Rico, this 13th day of June, 2008.

27 S/ JUSTO ARENAS
28 Chief United States Magistrate Judge